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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE 1762nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Ms. EVATT

later: Ms. MEDINA QUIROGA

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Mexico (CCPR/C/123/Add.1; HRI/CORE/1/Add.12/Rev.1; CCPR/C/66/Q/MEX/1/Rev.2)

1. At the invitation of the Chairperson, Mr. González Felix, Mr. Arias Marin, Mr. Ampudia Mello, Ms. Morgan Sotomayor, Ms. Garza Hurtado, Ms. Sanchez Valderrama, Ms. Pérez Duarte y N. and Mr. Sánchez Gutiérrez (Mexico) took places at the Committee table.

2. The CHAIRPERSON welcomed the Mexican delegation and invited its members to introduce the fourth periodic report of Mexico.

3. Mr. GONZÁLEZ FELIX (Mexico), Ambassador, said that the fourth periodic report of Mexico (CCPR/C/123/Add.1) had been drawn up in accordance with the Committee's guidelines and gave an account of the progress made between 1992 and 1996. It was supplemented by an "addendum", which set out the measures taken by the State party since the submission of the report (document without a symbol circulated at the meeting in English and Spanish only).

4. He said that the Constitution and the federal laws of Mexico had been thoroughly revised in recent years. Thus, a judicial reform system had been set up in 1994 to ensure effectiveness, the independence of magistrates, the autonomy of judicial organs and the professionalism of judicial personnel, in particular by improving their qualifications and working conditions and making promotion subject to examinations and competitive procedures. The first step in that reform had been the creation on 2 February 1995 of the Federal Council of the Magistracy. In addition to the office of assigned counsel, the office of legal adviser had recently been created. The desire to dispense justice rapidly had led to an increase in the number of courts in certain states. In parallel to the ordinary courts, there were military courts with investigative powers, which based their decisions on the Code of Military Justice, generally stricter than ordinary law.

5. The Mexican Government was determined to combat impunity. Thus, over the previous two years, in addition to those who had been disciplined on the recommendation of the National Human Rights Commission (CNDH), almost 1,000 public servants had been dismissed, 1,139 had received minor punishment, and 317 had been prosecuted. During the same period, training programmes for officers of the Federal Attorney-General's Office and the federal judicial police had been stepped up.

6. There had also been considerable progress in the fight against torture: while in 1991 incidents of torture had been the most frequent cause of complaints to the CNDH (225 complaints in the period December 1990-June 1991), by 1998 they had been only in thirty-second place, with a total of 21 complaints in the period January-December 1998. Under the 1991 Federal Act to Prevent and Punish Torture (para. 123 of the report), a vast legal

framework had been set up and 28 people had been sentenced for committing acts of torture. President Zedillo had very recently reiterated his commitment to fighting torture in every possible way.

7. A new National Public Security Programme had been launched, and in August 1999 the President himself had called for a national campaign against crime and delinquency, with the participation of the Federal Government, the state governments and various civil society organizations.

8. On 8 June 1999, Congress had approved an amendment to article 102 of the Constitution, granting full financial and administrative autonomy to the CNDH. Henceforth, the President of the CNDH would be elected by the legislature for a five-year term renewable only once. He would report every year to the federal authorities. From its creation in 1990 to December 1998, the CNDH had received 66,085 complaints, of which 98.4 per cent had been settled, and had made 1,380 recommendations, of which 71 per cent had been implemented in entirety, 23 per cent had been implemented partially, and 3 per cent had been rejected. In 1998, 558 complaints had challenged decisions of human rights bodies or protested against their non-application. The CNDH was also conducting a number of programmes to combat impunity or assist various particularly disadvantaged or vulnerable sections of the population, and was providing training courses, particularly for public servants. Under the aegis of the CNDH, the itinerant judges service (Cuarta Visitaduría) had been set up in February 1998 to handle indigenous affairs: that service, which deserved special mention (paras. 634 and 635 of the report and the addendum), made it possible to speed up and improve the procedure for filing and investigating complaints concerning alleged violation of indigenous people's human rights. The CNDH had achieved the release of 802 people under its early-release programme for indigenous prisoners. It had also handled 417 complaint cases in the State of Chiapas and had sent 31 requests for preservation measures to the Government of Chiapas.

9. He added that one of the principal aims of the Government of Mexico had been to strengthen democracy and that hence political pluralism and transparency in electoral processes had become reality in Mexico. The major political parties had in 1994 signed a national political agreement which had laid the foundations for a better equilibrium between the three branches of government and had given greater autonomy to the states and municipalities. The desire of the Government and society to establish democracy on a firm foundation had also been illustrated by the fact that all the parliamentary groupings of the Congress of the United Mexican States had approved by consensus the amendments to the Constitution published in the Official Journal of 22 August 1996. Those amendments had modified the parameters of the make-up of the national representative bodies such that no party any longer had an absolute majority in the Chamber of Deputies. The legal conditions and the conditions laid down in the Electoral Code for a political group to become a national political party had been made more flexible and as a result the number of recognized national political parties had increased to 11 after the registration as political parties of six civil organizations meeting the new conditions. Political groups which were not recognized as political parties could, moreover, also participate in federal elections by signing a participation agreement with a political party and having the agreement registered by the electoral authority.

10. The Government of Mexico was giving very particular attention to the situation of the 10 million indigenous people, representing 10 per cent of the population of Mexico, spread across 24 states. Article 4 of the Constitution had been amended in order to recognize the multicultural composition of the Mexican nation, and various other federal and state documents had been revised in order to promote and protect the rights of indigenous people. In addition, the Government had taken advantage of a national referendum and the San Andrés Agreements to draw up new constitutional amendments on the subject, which were currently being examined by Congress together with other amendments proposed by political parties.

11. He assured the Committee that his Government was determined to fulfil its international obligations. Thus, 1997 had seen the foundation of the Intersecretarial Commission for the fulfilment of Mexico's international human rights obligations, which was responsible for coordinating the activities of different public bodies and presenting recommendations. Moreover, one of the objectives of the national development plan 1995-2000 was the protection and defence of human rights and the strengthening of the rule of law and the mechanisms for ensuring the respect of the rights laid down in the Constitution. In order to give effect to paragraph 71 of the Vienna Declaration and Programme of Action, the National Programme for the Promotion and Strengthening of Human Rights had been set up in 1998. Notably, it included campaigns against violence, torture, impunity and enforced disappearances, and the production of periodic reports, assessments and statistics.

12. The Government was also cooperating fully with international institutions, as demonstrated by the visits to Mexico by various United Nations representatives (in particular the High Commissioner for Human Rights). The Senate had recently approved ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the acceptance of obligatory jurisdiction by the Inter-American Court of Human Rights. The Intersecretarial Commission was also studying the possibility of Mexico's accession to other instruments and had recommended withdrawing some of the reservations laid down by Mexico when ratifying certain instruments.

13. The CHAIRPERSON thanked the delegation and invited it to reply to items 1 to 14 of the list of issues (CCPR/C/66/Q/MEX/1/Rev.2).

14. Mr. ARIAS MARIN (Mexico), replying to question 1 in his capacity as assistant coordinator for negotiation and dialogue in Chiapas, said that the San Andrés Agreement was not a definitive peace agreement but merely a partial agreement dealing exclusively with indigenous rights and culture and signed within the larger framework of complex negotiations between the Government and the Zapatista National Liberation Army, dealing with five areas: détente and disarmament, indigenous rights and culture, democracy and justice, social well-being, and the situation of indigenous women. Two points needed to be kept in mind: all the agreements were to be drawn up within the framework of the Constitution and preserve the unity of the nation, and all the commitments undertaken by the Government had to be endorsed by Congress. The substance of the San Andrés Agreement was to make provision for the recognition of

indigenous people in the Constitution, which had been done with the amendment of article 4, and the recognition of the indigenous peoples' right to self-determination. The dialogue had been unilaterally broken off by the Zapatistas because of a difference of interpretation on that point, the Zapatistas wishing to see self-determination for the indigenous inhabitants as a people and the Government considering that the indigenous inhabitants had historically been organized in communities and not as a people.

15. Turning to question 2, he said that the entire judicial system acted on the basis of the provisions of international instruments and that it was becoming common for magistrates to avail themselves of the provisions of the Covenant. As to the autonomy of the CNDH, the relevant bill had been approved in June 1999. Concerning the follow-up action taken by the CNDH, he said that it was carried out on a case-by-case basis according to the recommendations made and that 96 per cent of those recommendations were implemented.

16. Ms. PÉREZ DUARTE Y N. (Mexico), a member of the Permanent Mission of Mexico at Geneva, replying to question 5, said that equality between men and women was guaranteed by article 4 of the Constitution. Everyone knew, however, that documents were not enough to change ancestral traditions, common to all countries in one form or another. For that reason, the authorities had in recent years developed a large-scale gender-equality awareness campaign, and a national programme had been set up to try to end customs which discriminated against women. The measures taken in that context mainly concerned education (from primary to university level) and the media, and demonstrated the Government's desire to alter the image of the Mexican woman. The Government was also trying to meet the demands of women wishing to play a greater role in political decision-making in Mexico, especially within political parties, and other measures were needed to help women at the social level. There were at least 10 per cent of women occupying decision-making posts in the executive, judicial and legislative branches. In the highest court in Mexico, the High Court of Justice of the Federal District, women accounted for 32 per cent of judges, and they represented almost half of all judges in courts of first instance. The Senate included 17.2 per cent of women and the Parliament 17.4 per cent. However, as in all democracies, the proportion of women participating in the legislative bodies fluctuated over the course of time; in 1994, for example, the proportion of women members of parliament had risen from 17 per cent to 28 per cent.

17. The CNDH had re-examined the corpus of legislative standards in order to identify and eliminate deficiencies in respect of gender equality. That initiative had led to the publication of a 33-volume collection, available for consultation in the Palais des Nations library, of a series of proposed legislative amendments, which had been presented to the President of Mexico, who had consequently conveyed them to the governments of all the states of the Union. Those bills, intended to provide a full guarantee of gender equality, had already been brought before the legislative assemblies of certain states.

18. Regarding item 6 (a) of the list of issues, the scale of the problem of violence against women in Mexico could be described as comparable to that in the rest of the world, and the Government was sparing no effort to put an end to it. The Government was conscious of the need to break the wall of silence surrounding the issue of violence committed against women and to get to the

root of the problem. Violence against women was closely connected with domestic violence, and the procuratorial authorities in the different states had since 1988 been launching programmes and setting up specialist organs.

19. Regarding item 6 (b), the Mexican delegation was unfortunately unable to provide figures for the number of cases of rape reported for the country as a whole since the state procuratorial authorities were not required to forward those statistics to the Federal Government. That being said, the work carried out over the past decade, and more particularly under the National Programme for Women and the National Programme against Domestic Violence, the latter of which had been launched the previous year, had led to greater reporting and punishing of rape than in the past. Moreover, judges tended to impose heavier penalties for rape than for other crimes of comparable gravity. Another important aspect was that, in Mexico, rape happened largely within the family. In order to stop violence against women and violence in general, it was essential first to tackle domestic violence, and the authorities were trying to take measures in every aspect within their remit. In particular, the Federal Government had organized in 1998, in collaboration notably with UNICEF, a training course on domestic violence for magistrates of the courts and the prosecution service in order to ensure full adherence in judicial procedures to the provisions of the international human rights instruments to which Mexico was party. However, under Mexican law all punishments had to be legislated for, and, since domestic violence was not considered a crime, judges had previously been reluctant to penalize it. Since the training courses and also as a result of pressure from civil society for justice to be administered, the magistrates' attitude had, however, changed.

20. Regarding item 6 (c), the authorities had set up teams responsible for training the police in dealing with victims of domestic violence or crimes endangering psychological or sexual stability.

21. There was no law on domestic violence (item 6 (d)), but the CNDH Rights had, in the study mentioned earlier, put forward proposals for the reform of the civil and penal codes in order to combat that problem. The legislation had already been amended in certain states, and the authorities hoped that by the end of the year all the states of Mexico would have completed the reform of their civil and penal codes in that area.

22. Concerning the problem raised in item 6 (e), that was another area in which the Committee could usefully refer to the study published by the CNDH, which had drawn up recommendations for improving the relevant situation. Child prostitution and the use of children in pornography had not previously been an offence but were now punishable under the Penal Code.

23. Mr. ARIAS MARIN (Mexico), replying to the questions in paragraph 7 of the list, said that the greatest number of complaints connected with the existence of paramilitary groups had been registered in the state of Chiapas. Giving a brief résumé of the context, he said that in the 10 days after the uprising by the Zapatista National Liberation Army (AZLN), the Government had declared a unilateral ceasefire and had entered into negotiations with the AZLN, a process which had then become institutionalized. As the Committee would be aware, that negotiation between a government and a guerrilla group was unique in Latin America; it was based on a law which had been adopted by

all the parties represented in Congress. However, the greatest danger for the population of the state of Chiapas was presented not by a potential confrontation between the Governmental armed forces and the AZLN, but rather by collateral violence committed within or between communities, between "anti-Zapatistas" and "pro-Zapatistas". In Chiapas there were armed groups of civilians representing each of those tendencies. The problem was a serious one, because it had caused a rupture of the social fabric, going far beyond the traditional conflicts over land ownership, religion or politics. People who did not subscribe to the majority attitude in their communities towards the Zapatistas were expelled, and retaliatory blood crimes within or between communities, which admittedly had always existed, had now reached alarming proportions.

24. The situation in the state of Chiapas was serious and the Zapatista uprising had, unsurprisingly, created a climate of violence. There was a great deal of trafficking in arms, largely from Central American countries, and communities were arming for their own defence. In that connection, he mentioned the tragic events which had taken place in the village of Acteal, following on from the serial murders of 22 people. The most likely hypothesis by those appointed to investigate the Acteal killings pointed to vengeance by groups provoked by the aggression which had preceded. It was important to understand that that type of violence, which affected a large number of communities in Chiapas, in particular those where AZLN influence was strong, was the product of a very complex mechanism. The Government had taken measures to try to put a stop to it at a local level, notably by encouraging communities to surrender their weapons and by asking the Zapatistas to cooperate in that. To date, since the dialogue with the AZLN had been suspended, the measures had not produced all the results expected, but the federal authorities were convinced that the problem could not be solved without effective political participation by the AZLN.

25. Mr. GONZALEZ FELIX (Mexico), adding to what Mr. Arias Marin had said, assured the Committee that the CNDH was following very attentively all questions relating to allegations of torture, disappearances and extrajudicial executions in Mexico. Contrary to what was suggested in item 7 of the list of issues (CCPR/C/66/Q/MEX/1/Rev.2), there were no paramilitary forces in Mexico. Regarding the investigations, the Mexican delegation had that morning submitted to the Chairperson of the Human Rights Committee a document containing full information on that subject. He added that, as far as acts of torture were concerned, the measures taken over the last decade or so had led to an appreciable reduction in the number of such violations, which were duly punished under the law. In a number of cases, the perpetrators had been sentenced and in a few cases the victims had been compensated by the civil courts.

26. In the matter of alleged disappearances, the authorities had in 1992 registered 25 reports of that type of occurrence; in three cases, the individuals had been found alive and in 10 cases they had been found dead. In 1993, there had been 32 reports, 18 persons found alive and 6 found dead. In 1994, there had been 37 reports, 14 persons found alive and 12 found dead. In 1995, there had been 39 reports, 31 persons found alive and 3 found dead. In 1996, there had been 37 reports, 27 persons found alive and 9 found dead. In every case where a person who had allegedly disappeared had been found dead,

the authorities had launched an inquiry. On the question of extrajudicial executions, likewise, the Committee would find precise information in the previously mentioned document on the measures taken by the authorities to deal with the issue. In general, the Government was demonstrating particular vigilance and examining the situations case by case.

27. In response to item 8, he referred the Committee to the same document, which provided an analysis of all reported cases, together with statistics and percentages. Summing up, he said that the number of cases of torture could be seen to be decreasing and the number of penalties growing. However, it was very clear that the Government would not leave it at that and intended to put a complete stop to the practice of torture.

28. Ms. PÉREZ DUARTE Y N. (Mexico) said, in reply to question 9, that the relevant law had already been modified some time earlier and that, in order for a confession to be accepted as admissible, it had to be accompanied by various other corroborating evidence. Under the penal system, when no other information supported a charge, confessions were dismissed and the defendant had to be released. If there was evidence in a case to show that confessions were not sufficiently reliable to be accepted, the court based its judgement on that other evidence. In cases where the confession had been extracted by torture or by other coercive means, the judicial system provided for the judgement to be reviewed, in order to avoid the practice of torture for the purposes of obtaining confessions, and whatever the crime. It was true that Mexican public opinion continued to denounce the use of torture to obtain confessions, but she assured the Committee that magistrates now took care to ensure that confessions were not accepted where there was no corroborating or supporting evidence. The law was very strict in that respect, and it was applied.

29. Concerning item 10, the reform referred to had been adopted on 8 February 1999 and it was thus too early to know its practical effects. The reform had been criticized on the grounds that it had extended the powers of the police in cases of flagrante delicto. In reality, it was intended to achieve precisely the opposite, by restricting those powers exclusively to cases where the perpetrator of the offence was caught red-handed or exposed by the victim or a witness. In those cases, the suspect was required to be arrested within 48 hours of the offence and legal proceedings were automatically instituted. However, that procedure only applied to serious offences.

30. Mr. AMPUDIA MELLO (Mexico), Ministry of the Interior, replying to the questions in paragraph 11 of the list, said that 139,707 persons were currently in prison in Mexico, 42.27 per cent of them in pre-trial detention. The average duration of pre-trial detention was 14 months, which corresponded to the average length of judicial proceedings.

31. In reply to the questions in paragraph 12, he said that chapter 11 of the regulations for federal detention centres, a copy of which was available to the Committee, laid down the circumstances in which penalties could be applied to prisoners and the procedure to be followed. It also listed the remedies at the disposal of prisoners. To return to the question asked by the Committee, it ought to be mentioned that under the detention regulations,

penalties were applied by the Interdisciplinary Technical Board in each prison. That body consisted of prison officers and specialists in various fields, particularly psychologists involved in prisoner rehabilitation. The penalties could be reviewed and were applied after the Board had heard the prisoner's point of view. Under article 217 of the regulations, the decision had to be notified in writing to the prisoner concerned in order that he could challenge it if he wished. Article 218 authorized the prisoner to appeal against the Board's decision to the Directorate-General for Social Rehabilitation. In the final resort, it was possible to complain to the Human Rights Commission at the national or state level. The disciplinary sanctions envisaged consisted of reprimanding the prisoner in private or in public, partially or totally depriving him of visits from family members or other persons, moving him to another dormitory or transferring him to a special section.

32. Mr. GONZALEZ FELIX (Mexico) said in reply to the questions in paragraph 13 that, at the present time, at all stages of the judicial process, the authorities concerned had access to a service responsible for ensuring that prisoners' human rights were respected. In addition, the CNDH had access to the case file of anyone being prosecuted. What was more, anyone who considered himself the victim of arbitrary detention or a judicial error could submit a petition of habeas corpus. The most important reform of recent years had been the incorporation into the Civil Code of provisions allowing persons who had been subjected to arbitrary detention to claim damages from the State. In that connection, Mexico had entered in regard to the International Covenant on Civil and Political Rights a reservation concerning provision for compensation in cases of arbitrary detention. Since compensation was now provided for by the Civil Code, there was no longer any justification for that reservation and consultations on its withdrawal were under way.

33. Mr. AMPUDIA MELLO (Mexico), replying to the questions in paragraph 14 of the list, said that the measures taken by the local and national authorities to reduce the prison population had been made possible by the law on the minimum rules for social rehabilitation, which fixed criteria and methods in respect of early release of prisoners. Various special programmes had been set up by the relevant public bodies in order to facilitate the early release of prisoners, especially those belonging to vulnerable groups, such as indigenous persons and individuals responsible for supporting poor families. Additionally, under the National Public Security Programme, particular attention was being devoted to renovating prisons. The sums being spent on improvement and extension of prisons in 1999 amounted to 700 million pesos.

34. Regarding action to combat alcoholism and drug addiction in prisons, the Mexican authorities, together with a number of social organizations, were making an effort to ensure that the rules were followed not only by prisoners but also by prison staff. Disciplinary measures were regularly taken against prisoners violating the rules. Likewise, any violation by those in charge and by prison staff was severely punished. Thus, in 1998, 317 prison officers had been disciplined and 217 of them had even been prosecuted.

35. The CHAIRPERSON invited those members of the Committee who so wished to address oral questions to the Mexican delegation.

36. Mr. SOLARI YRIGOYEN, after paying tribute to Mexico for its role as a country of asylum, said that the fourth periodic report of the State party showed that positive changes had taken place since consideration of the previous report. The human rights situation was now the object of constant monitoring both at federal and local level as a result of the work of various public servants who had been nominated in recent years. The police forces had been purged and provisions prohibiting torture incorporated into the Penal Code; the jurisdiction of the Inter-American Court of Human Rights had been recognized in 1998 and the Government had pledged to abide by its decisions. Profound changes had been made to the electoral system to allow free and democratic elections. The rights to freedom of expression and association were now widely respected. The creation of the National Human Rights Commission was an extremely important step even if the CNDH did not yet enjoy full independence. Finally, it was gratifying that the United Nations High Commissioner for Human Rights had been invited to visit Mexico.

37. The changes were certainly important, but they should not obscure the fact that the situation remained very worrying, as demonstrated by the numerous complaints from persons whose credibility could not be doubted. Attacks on the right to life as well as the right to liberty and security of person continued to be committed. There were frequent cases of unlawful detention. It also had to be noted that extrajudicial executions had not ceased. The explanations given by the Mexican delegation were inadequate, for in many cases they were premeditated massacres. There was also the problem of enforced disappearances. The delegation had declared that the number had fallen and that certain cases had been cleared up. But information from other sources gave a quite different picture and the Committee had a long list of names of people found dead after having been reported missing.

38. It was gratifying that the report emphasized the problem of torture, a practice which, to cite the Universal Declaration of Human Rights, outraged the conscience of mankind and for which there were no mitigating circumstances. On the other hand, certain types of behaviour on the part of the judicial authorities gave rise to grave concern. Agents of the State seemed to enjoy total impunity and that was also the case for certain elements of the army, who carried out policing activities in regions which were home to indigenous populations, as well as paramilitary groups which held sway in Chiapas and other provinces. The Government's decision to allow the International Commission of Jurists to visit Mexico to investigate the situation in certain regions was to be welcomed, but certain rules meant that numerous human rights organizations continued to be refused access.

39. Mexico had made firm commitments to its population and the rest of the world to respect human rights. Those commitments should now find expression in laws and regulations, and in the behaviour of the public authorities. Arguments based on real or imagined facts were often invoked to justify practices incompatible with human rights. It should be reiterated that, whatever the situation in a country, nothing could justify human rights violations by a Government.

40. Ms. Evatt took the Chair.

41. Ms. GAITAN DE POMEO inquired about the impact of the 1994 electoral reform given that in Mexico power had long been in the hands of a single party and the communication media had been a State monopoly. Were the mechanisms in place sufficient to make the electoral process more transparent, in conformity with the requirements of article 25 of the Covenant? On a more practical level, how were the different parties' candidates in the presidential elections designated and what effect did polls have on the electoral process?

42. Regarding measures designed to put an end to torture, the Committee was interested in knowing what had happened to the thousand or so State agents who had been dismissed. Additionally, an increase or decrease in the number of complaints was not an accurate yardstick of the scale of the problem, for often the victims did not dare complain because they did not trust the institutions. Given that torture was an offence under ordinary law, what procedure was followed when the alleged perpetrators of acts of torture were military personnel or police officers? Enforced disappearances were another problem whose scale could not be measured by the number of cases reported. It would therefore be interesting to know how many inquiries into cases of disappearance had been carried out by the Office of the Public Prosecutor and by the CNDH. What progress was the ratification of the Inter-American Convention on the Forced Disappearance of Persons making in that respect? The Committee would also like to know whether the Special Programme for Presumed Missing Persons could inquire into cases of disappearance or whether it limited itself to merely passing them on to the authorities. Were its decisions, where appropriate, binding? More information would be welcome on the follow-up to the proposal to make that programme into an independent body.

43. Finally, she wished to know whether the issue of the death penalty was the subject of public debate in Mexico and whether the State party was planning to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty, given that that penalty, which was provided for in the Mexican Constitution, was no longer applied.

44. Mr. YALDEN said that, if the Mexican delegation did not have the necessary information to reply immediately to the questions he wished to ask, it could reply later in writing.

45. The San Andrés Agreement was undoubtedly a historic document, but, unfortunately, there were obstacles hindering its application and the continuation of negotiations. The Committee had taken note with interest of the information that a new initiative for cultural and linguistic self-determination by the indigenous populations was pending in Congress. He would be glad to receive the text of that bill.

46. Regarding the reform of the CNDH, he would appreciate more information on the measures intended to increase its independence. In particular, he wished to know by whom and by what means the three candidates to the CNDH presidency were nominated and whether the president could be removed from office and, if so, in what circumstances. Of the 66,000 complaints filed with the Commission since its founding, a large number, according to the Mexican delegation, had led to a conclusion. What exactly did that mean? The delegation had mentioned agreements between the CNDH and the relevant public

bodies, but there was no indication of the measures taken to satisfy the person whose rights had been violated. Was there any provision for compensation? The same question applied to certain complaints by specific groups, such as indigenous persons and women. Furthermore, since it seemed that the CNDH was only empowered to make recommendations, what happened when they were not followed? The Committee would welcome details of the CNDH's remit and particularly of its role in respect of complaints against members of the armed forces.

47. Women were, according to numerous sources, under-represented in high-ranking private-sector posts and were generally paid less than men for equal work. What exactly was the situation in that regard?

48. Ms. Medina Quiroga resumed the Chair.

49. Mr. WIERUSZEWSKI said that the additional information provided by the State party would have made easier reading if it had been presented in accordance with the Committee's guidelines. Nevertheless, the information given went a long way to explaining a complex situation. Additionally, the increasingly cooperative attitude of the Mexican authorities towards the various United Nations human rights mechanisms was to be welcomed. It was gratifying to note that special rapporteurs had been able to visit Mexico and that the High Commissioner for Human Rights had been invited. All those measures, which showed that the Government of Mexico was now taking its international commitments very seriously, were promising in terms of the future of human rights in Mexico. Unfortunately, though, not everything was positive.

50. In its presentation, the Mexican delegation had mentioned efforts to put an end to impunity and had cited in particular a new National Public Security Programme. According to information supplied to the Committee, that programme was based on a special law authorizing the armed forces to participate alongside the police, under a single command structure, in the suppression of criminal activity linked, for example, to terrorism and drugs trafficking. The Committee had also been informed that that law, which authorized military personnel to carry out inquiries and arrest suspects, had been judged by the Supreme Court to be in conformity with the Constitution as long as the units in question were under the supervision of the Office of the Attorney-General. The Committee wished firstly to know whether the National Public Security Programme mentioned by the State party's delegation was the same programme that had been launched in 1995. Also, what was the mechanism by which the civil authorities exercised control over military personnel who took part in police operations, especially given that various sources feared that army participation in those operations considerably weakened the judicial safeguards which suspects should enjoy? It would also be useful to know whether any violations committed by military personnel belonging to the relevant units fell within the jurisdiction of the civil courts or of military tribunals, for it was known that the latter tended to look with greater indulgence on crimes committed by military personnel. Finally, had anyone already been prosecuted or tried under the law establishing the National Public Security Programme? Since the programme was intended to combat impunity, it was to be hoped that those implementing it would not be above the law.

51. Like the earlier speakers, he was concerned by the problem of torture. The addendum to the fourth periodic report, which the Mexican delegation had had distributed to the Committee in English and Spanish, provided in the section dealing with article 7 a list of requests for investigation submitted to the CNDH between May 1997 and December 1998: the principal violation among those mentioned was torture. Of the 18 cases listed, 14 were described as "partially resolved", the four remaining cases being fully resolved. Did the term "partially resolved" mean that the cases in question would subsequently go to ordinary judicial review? It could be regarded as surprising, in fact, that such complaints were examined by a body such as the CNDH.

52. Again with respect to the application of article 7, he, like the earlier speakers, referred to the problem of the shortcoming in the Mexican penal procedure system which failed to provide for effective judicial supervision during the investigation period when the suspect was in custody and during his examination. The statement made to the Office of the Attorney-General before the arrested person was allowed to contact his lawyer opened the way for torture and other violations of rights protected under article 7. Was the Mexican Government aware of that situation, and what was it doing to protect detained suspects' rights during that period?

53. Concerning disappearances, the information provided in the addendum distributed by the delegation (p. 9 of the English version) gave an account of the Special Programme for Presumed Missing Persons (paras. 109-113 of the report) which had been carrying out the necessary investigations to discover the whereabouts of persons reported as missing, something he found puzzling. He would wish for more information on that programme, which was run by the CNDH. How could a body such as the CNDH be responsible for such functions, and how could it carry them out effectively? Why was the crime of enforced disappearance not included in the Penal Code? What had happened regarding the six recommendations made by the CNDH concerning the Special Programme for Presumed Missing Persons (para. 113 of the report)?

54. Mr. KLEIN said that he had noted the delegation's declaration that the Mexican courts referred to the provisions of international instruments, but it was regrettable that no specific example from case law had been provided. He wished to know whether there had been cases where a provision of the Covenant had been invoked, in accordance with article 133 of the Constitution, but without result because it was incompatible with the latter.

55. In connection with items 7 ff. of the list, concerning the application of articles 6, 7, 9, 10 and 14 of the Covenant, he was also concerned by the military participation in law enforcement functions and activities, especially taking account of the differences between the military and the civilian police in terms of criminal responsibility. Military personnel were judged by military tribunals and, according to the information available to the Committee, it would appear that they were thus guaranteed virtual impunity, which was worrying from the point of view of the Covenant.

56. The Mexican authorities were fighting the practice of torture, according to the delegation. It was clear to everyone that the most dangerous period for a newly arrested person was the first few hours between arrest and appearance before the judge: article 9 of the Covenant provided that the

latter should happen as promptly as possible. In Mexico, there could be a delay of from 48 to 96 hours, in certain special cases, before the suspect was brought before a judge. That was not consistent with article 9 of the Covenant and he wished to hear what the delegation had to say on the subject. He wished to know the precise procedure which followed an arrest: did the detainee have the right to contact a lawyer immediately after arrest? According to his information, that was not the case. Was he allowed to see members of his family and, if so, from what stage? That was important in order to avoid incommunicado detention.

57. Concerning paragraph 9 of the list, he wished to know who was required to prove that a confession had been extracted by means of torture. Did the burden of proof lie with the defendant? How was the right to a fair and public trial guaranteed in Mexico? According to the information available to the Committee, hearings in Mexico were not always public: on occasion the public was kept at quite a distance from the judge and even separated from the judge, the prosecutor and the defendant by a glass partition. Did the Mexican delegation consider that to comply with the requirements of article 14? Finally, concerning the security forces, it appeared that judgements were neither made public nor published. Was that correct, and did it comply with article 14?

58. Lord COLVILLE said that he wondered about the value of confessions in connection with the written question in paragraph 9 of the list. He wished to know whether the Federal Act to Punish and Prevent Torture, cited in paragraphs 123 and 125 of the report, was applicable in all the states of the Federation, for, if that was not the case, it presented a serious problem in relation to the Covenant. Regarding torture, it was beyond doubt that there was a real danger in the period immediately following the arrest of a suspect, for the police or the investigating authorities had a tendency to try to extract confessions by force or torture. That was why judges had to exercise extreme vigilance in the matter of confessions, which of course did not automatically have probative value. It was for the judge to determine the weight to be given to a confession.

59. In that connection, he wondered what happened when an arrested person made a confession and later announced that it had been extracted by torture. If he understood correctly, under the Mexican penal procedure, an initial statement or deposition had more weight than potential later modifications or retractions. If that was the case, it made it extremely difficult for a defendant who had been questioned and made a confession which he had subsequently retracted to prove that his confession did not represent the truth. In order to reach an opinion on the implementation of the Covenant, the Committee needed to know who was required to prove what, in other words whether the prosecution had to prove that the confession had not been extracted by means of torture or whether the judge required the person who had confessed and then retracted the confession to prove that it could be retracted. If the second scenario was true, it had to be concluded that Mexican law provided no protection to a person who had been tortured in order to force a confession. The delegation would have to explain to the Committee how judicial procedures worked in such cases.

60. Lastly, he wished to know whether a person charged with an offence automatically had the right to be present at the hearing of his case or whether he had to make a request to attend. The second scenario would be a violation of article 14 of the Covenant.

61. Ms. CHANET thanked Mexico for having submitted the fourth periodic report in comprehensive and timely fashion and said that she had appreciated its oral presentation supplemented by useful additional documents. The Committee had a plethora of texts, but no real information on their practical application.

62. Her first question could be viewed in relation to paragraph 15 of the list, in which the State party was asked whether it had any particular reason for maintaining the reservation to article 13 of the Covenant, but in fact it applied to all the reservations and interpretational declarations made by Mexico concerning articles 9, 13, 18 and 25 of the Covenant. What was the Government's position on those reservations and interpretations as a whole?

63. Her second question concerned the application of article 4 of the Covenant and the state of emergency. According to paragraph 76 of the report, no state of emergency had been declared in Mexico during the period under review. She felt it was necessary to define what was meant by "state of emergency". There could arise in any place situations of exceptional public danger in which the Covenant authorized the Government to derogate from certain articles upon making a declaration to that effect to the Secretary-General; that procedure allowed the Human Rights Committee to check on the application of article 4. In the case of Mexico, it was clear from the situation that the State could be in a position to apply article 4, but the report said that a state of emergency had not been declared during the period under review. For example, it would appear that in one part of Mexico, the state of Chiapas, article 14 of the Covenant was not being applied: apparently trials were not public and there were checkpoints, unlike in other parts of the country. Why had a de jure state of emergency, which was not prohibited, been substituted by a de facto state of emergency, which in reality was beyond all control, including that of the citizens?

64. Concerning the application of article 6 of the Covenant (the right to life), she had been informed that a bill to make enforced disappearance a criminal offence had been submitted to the Senate and wished to know what the exact situation was in that regard.

65. Concerning the application of article 9, and more particularly police custody and arrest, she associated herself with the comments made by other members of the Committee. The amendment to article 16 of the Constitution provided for arrests other than by warrant issued by a judge and had considerably broadened the scope for the Office of the Attorney-General, in other words the public prosecutor, a representative of authority, to issue arrest warrants in "urgent" cases. What was an urgent case? What criteria were applied in practice to define such cases and avoid arbitrariness? Moreover, she found strange a recent definition of flagrante delicto: for her, it meant a criminal act which should be evident (manifest) or in the process of being committed. Yet the Code of Penal Procedure defined as flagrante delicto as the fact of carrying an object about one's person, having

been seen by a witness, committing a serious crime or being accused by a co-defendant. She could not see where the flagrancy lay in those cases. That would not be so serious if the flagrante delicto regime was not so restrictive, providing for police custody lasting up to 96 hours, which did not comply with article 9.

66. Regarding police custody, she wished to know the details of that particular period in terms of the presence of a lawyer, contact with the outside world and contact with a doctor. It appeared that in Mexico the doctor who examined the detainee was appointed by the State and carried out a medical examination before the detainee was questioned. All of that raised issues regarding the conformity of Mexican legislation with article 9.

67. Mr. POCAR welcomed the Mexican delegation and said that its members were particularly well qualified to reply to the Committee's questions. He thanked the delegation for the useful information provided orally, which had allowed the Committee to gain an idea of the steps taken to guarantee the rights laid down in the Covenant. Two improvements ought to be particularly emphasized: the independence granted to the CNDH and the reply concerning the reservations to the Covenant entered by the State party.

68. Firstly, he wished to question the delegation about impunity in its various forms. He was concerned by military justice, for the report of the Commission on Human Rights' Special Rapporteur on torture (E/CN.4/1999/61) showed that military personnel in Mexico were never brought before civil courts and that they were generally protected from proceedings in military courts. He wished to know more about that. Under article 13 of the Constitution, military courts tried only breaches of military discipline. What did that mean in practice? Did the jurisdiction of the military courts extend to charges of human rights violations by military personnel? Members of the military who were accused of having participated in acts of torture, forced disappearances or arbitrary or other executions should be tried by the civil courts. That was why he wished to know the precise jurisdiction of the military courts. He considered that particularly important in view of the fact that in Mexico the army was heavily involved in activities which were normally the domain of the police or other bodies responsible for upholding the law. As part of the same question, he wished to know the degree to which members of the armed forces and the police were answerable to the public prosecutor or the Office of the Attorney-General, in other words the investigating authorities. For it appeared that public prosecutors were often negligent when it came to prosecuting members of the police or the military who had been accused of human rights violations. He also asked the delegation to indicate the extent to which the police participated in judicial inquiries, for he believed that there were a number of problems in Mexico in that connection.

69. Concerning the activities of paramilitary groups, which were known to be operating in Mexico, he believed that the authorities, particularly the security forces and the local authorities, were demonstrating a certain laxness towards them. It would appear that the reasons for such a situation lay in the lack of law enforcement institutions. What measures were the Mexican authorities planning to take in the near future to remedy that state of affairs?

70. His last question concerned torture. Associating himself with what had been said previously by other members of the Committee, he asked the delegation to clarify its earlier statement that when a confession represented the only evidence, it could not be used against the defendant. However, he had also gained the impression that, where a confession had been extracted by means of torture, greater weight had to be given to the rest of the evidence. He would be glad of clarification of the matter in order to be sure that confessions extracted by means of torture had no value at all.

The meeting rose at 1.05 p.m.